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What Happens to SCHIP After March 31, 2009?

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Summary

The Balanced Budget Act of 1997 (BBA97, P.L. 105-33) created the State Children's Health Insurance Program (SCHIP) and appropriated nearly $40 billion over the 10-year period FY1998 to FY2007. The Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA, P.L. 110-173) appropriated more than $10 billion to ensure that no state's SCHIP program runs out of federal SCHIP funds before March 31, 2009. Without legislative action, three sources of federal SCHIP funds will no longer be available after March 31: (1) states' FY2008 federal SCHIP allotments, (2) states' FY2009 federal SCHIP allotments, and (3) up to $275 million for eliminating FY2009 shortfalls through March 31, 2009. Only the handful of states with unspent FY2007 federal SCHIP balances could continue to draw federal SCHIP funds. Thus, 42 states are projected to have no federal SCHIP funds on April 1, 2009, under current law. If the availability of the FY2008 and FY2009 allotments were extended through the end of FY2009, shortfalls of federal SCHIP funds would still total approximately $1.8 billion in 28 states, though this could be mitigated in some states by the ability to access Medicaid funding, albeit at a reduced matching rate compared with SCHIP.

The Balanced Budget Act of 1997 (BBA97, P.L. 105-33) created the State Children's Health Insurance Program (SCHIP) and appropriated $40 billion for SCHIP original allotments from FY1998 to FY2007. The Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA, P.L. 110-173) appropriated more than $10 billion for FY2008 and FY2009 SCHIP original allotments, available through March 31, 2009.

Shortfall Funding for FY2009's First Two Quarters. MMSEA provided up to $275 million for states that exhaust all available federal SCHIP funds in FY2009 prior to March 31, 2009. To qualify, prior to March 31, states must be projected to exhaust their own FY2007-FY2009 SCHIP original allotments as well as any unspent FY2006 allotments redistributed from other states. Based on CRS analysis of the latest projections provided by states and current as of July 15, 2008, eight states will qualify for such shortfall funding of approximately $189 million, as shown in column D of **Table 1**. These eight states are projected to have no federal SCHIP funds on April 1, 2009.

FY2008 and FY2009 Allotments. The SCHIP appropriation for original allotments in FY2007, the last year provided for in BBA97, totaled $5.04 billion. MMSEA provided that same amount annually for SCHIP allotments in FY2008 and FY2009, stating, however, that these funds "shall not be available for child health assistance [SCHIP expenditures] for items and services furnished after March 31, 2009."[1] By March 31, 2009, 34 states are projected to be spending funds from their FY2008 or FY2009 allotments. When these allotments are no longer available, these states will have no other available federal SCHIP funds. Column E of **Table 1** shows the eight states that are projected to receive MMSEA shortfall funding (noted in column D) plus the 34 states projected to be spending from their FY2008 or FY2009 allotments on March 31, 2009. Between both groups, 42 states are currently projected to have no federal SCHIP funds on April 1, 2009, as shown in column E of **Table 1**.

The only federal SCHIP funds that would be available past March 31 are unspent FY2007 allotments, which are not subject to the MMSEA provisions. Eight states[2] and the District of Columbia are projected to have unspent FY2007 allotments after March 31. Five of these states would exhaust those funds during the remainder of FY2009; only Connecticut, the District of Columbia, Nevada and Washington would be able to fund their SCHIP programs with federal SCHIP funds through the end of FY2009 under current law. These are states whose SCHIP spending is well below their allotment levels.

Because of projected FY2009 spending far exceeding their allotment levels, 28 states, noted in column F of **Table 1**, would experience shortfalls totaling $1.8 billion even if the FY2008 and FY2009 allotments were available for the entirety of FY2009.

Medicaid Fallback Financing for Certain States. When states have no federal SCHIP funds, some have the ability to draw down federal Medicaid funds as a fallback option. This can occur in one of two ways.

First, states that have an SCHIP-financed expansion of Medicaid may access federal Medicaid funds at the regular Medicaid matching rate, although this match rate is lower than the SCHIP matching rate.[3] States that have an SCHIP program entirely separate from Medicaid cannot revert to Medicaid funds when their SCHIP funds are exhausted, except as discussed below. Column A in **Table 1** shows whether a state's SCHIP program is a Medicaid expansion (M), is separate from Medicaid (S), or consists of both (C, for combination). Most SCHIP enrollees are in a separate SCHIP program,[4] although historical analyses have shown that "states that were projected to have shortfalls [in FY2005, FY2006, or FY2007] ... were more likely to have a Medicaid component to their

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[1] §201(a)(2) of MMSEA.

[2] Connecticut, Delaware, Florida, Nevada, South Carolina, Tennessee, Vermont, and Washington.

[3] The federal government matching rate for Medicaid expenditures — the Medicaid federal medical assistance percentage (FMAP) — ranges across states from 50% to 77.3% in FY2008. The enhanced SCHIP FMAP ranges from 65% to 83.4%. The difference between the percentages results from the states' share of expenditures being 30% smaller in SCHIP compared with Medicaid.

[4] See Table 1 of CRS Report RL30473, *State Children's Health Insurance Program (SCHIP): A Brief Overview*.

SCHIP program."[5] This is also true among the states projected to face a shortfall in FY2009 even if the FY2008 and FY2009 funds are available for the entirety of FY2009.[6]

In general, Section 1115 of the Social Security Act provides the Secretary with broad authority to waive certain statutory requirements in Medicaid and/or SCHIP. Some states have approval under Section 1115 waiver authority, in the event of a shortfall, to draw federal Medicaid funds for the portion of their SCHIP program that is *not* a Medicaid expansion. Arizona, Hawaii, Massachusetts, Oregon, and Rhode Island are known to have such provisions in their approved waivers.

Federal Requirements Before Terminating SCHIP

There are laws and regulations that pertain to states' ability to terminate SCHIP-financed coverage. None addresses doing so as a result of the absence of federal funding. HHS may issue guidance for states terminating coverage because of the absence of federal funding. However, no federal statute or regulation prohibits states from continuing to operate their SCHIP programs at 100% state cost, with the potential to receive a federal match from future SCHIP funds.[7] This section briefly discusses some of the pertinent laws and regulations for states terminating individuals' SCHIP-financed coverage, which vary for Medicaid-expansion programs (in which case Medicaid limitations apply, based on Title XIX of the Social Security Act) and separate-SCHIP programs (in which case SCHIP limitations apply, based on Title XXI).

Separate SCHIP Programs. Under Title XXI, "An approved [SCHIP program] shall continue in effect unless and until the State amends the plan," with such an amendment contingent on approval by the Secretary.[8] Thus, even in the absence of any federal SCHIP funding, a state would ultimately need to submit a State Plan Amendment (SPA) to terminate coverage in its separate SCHIP program.

The law states that "[a]ny plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior public notice of the change, in a form and manner provided under applicable State law."[9] Federal regulations also require that if "eligibility is denied, suspended or

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[5] Kathryn G. Allen, "Children's Health Insurance: States' SCHIP Enrollment and Spending Experiences and Considerations for Reauthorization," Government Accountability Office, statement before the House Energy and Commerce Subcommittee on Health, March 1, 2007, p. 32, at [http://www.gao.gov/new.items/d07558t.pdf].

[6] Of these 28 states (that is, the states with amounts shown in column F of Table 1), approximately 75% have a Medicaid component; however, among the states *not* projected to face shortfalls in FY2009 if the FY2008 and FY2009 allotments are available for all of FY2009, 52% have a Medicaid component.

[7] States may receive federal reimbursement for SCHIP claims even if the expenditures were incurred before a particular SCHIP allotment was available (42 CFR § 457.614(a)).

[8] §2106(e).

[9] §2106(b)(3)(B)(i).

terminated," a state "must provide enrollees and applicants timely written notice."[10] In addition, if eligibility is suspended or terminated, the state must provide "sufficient notice to enable the child's parent or caretaker to take any appropriate actions that may be required to allow coverage to continue without interruption."[11] Neither federal statute nor regulation provides a specific length of time for "sufficient notice" to affected families.

Having met these requirements, the state may terminate individuals' eligibility without prior Secretary approval, as long as the SPA is transmitted to the Secretary within 60 days of the state having implemented the policy.[12] A SPA is considered approved unless the Secretary notifies the state in writing within 90 days after receiving the SPA that it is disapproved (and the reasons for disapproval) or that specified additional information is needed.[13]

Medicaid-Expansion SCHIP Programs. Under Title XIX, the effective date of a SPA that terminates or suspends coverage to an enrollment group, such as SCHIP-financed enrollees, "may be a date requested by the State if CMS approves it."[14] Enrollees must receive "timely and adequate notice of proposed action to terminate, discontinue, or suspend their eligibility."[15] Regulations require that the state "must mail a notice at least 10 days before the date of" terminating coverage.[16]

Budget Issues

Federal. Under current law, SCHIP has no federal appropriations past FY2009. However, for budget enforcement purposes, funding for SCHIP is assumed to continue in congressional budget projections and for purposes of the budget resolution (for FY2009, H.Rept. 110-659 accompanying S.Con.Res. 70). Specifically, the Congressional Budget Office (CBO) "assumes in its baseline spending projections that the funding for the program in later years will continue at $5.0 billion."[17] The FY2009 budget resolution also assumes that level of annual funding for SCHIP in later years.

In addition, the FY2009 budget resolution permits legislation providing "up to $50,000,000,000 in outlays over the period of the total of fiscal years 2008 through 2013 for reauthorization of SCHIP." Under the budget resolution, which requires any SCHIP reauthorization legislation to comply with PAYGO rules, the permissible $50 billion is the amount in excess of the baseline level of outlays over the FY2008-FY2013 budget

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[10] 42 CFR §457.340(e)(2) and 42 CFR §457.1180.

[11] 42 CFR §457.340(e)(2).

[12] §2106(b)(3)(B)(ii).

[13] §2106(c)(2).

[14] 42 CFR 430.20(b)(3).

[15] 42 CFR 435.919(a).

[16] 42 CFR 431.211.

[17] Congressional Budget Office, "Fact Sheet for CBO's March 2008 Baseline: State Children's Health Insurance Program," March 12, 2008, available at [http://www.cbo.gov/ftpdocs/90xx/doc9053/schip.pdf].

window.[18] The FY2009 budget resolution will remain in effect in the 111th Congress until (1) a new budget is agreed to by both chambers or (2) they determine they cannot come to agreement on a new budget and the House deems its own version as in effect for itself, in which case the Senate would continue to operate under the FY2009 budget resolution. Regardless, any applicable points of order against a bill's spending amounts can be waived according to the rules of each chamber.

State. State governments do not know for certain whether federal SCHIP funds will be extended past March 31, 2009 — and if so, by how much. State SCHIP directors often cite the need for "a predictable and stable funding stream."[19] This is often raised in the context of states wanting sufficient time to adjust their plans in response to the resources made available.[20] For example, there are at least six states whose legislatures are scheduled to meet only once every other year. Most state legislatures that meet annually convene their sessions in January, often with limitations on the length of those sessions.[21] Crafting state legislation or recommendations before knowing what federal SCHIP funds will be available could be a challenge for state legislatures and administering agencies.

Table 1. Projected FY2009 Federal SCHIP Financing

(in millions of dollars, unless specified otherwise)

State and SCHIP Program Type	FY2009 SCHIP original allotment (excluding other available funds)	Projected federal SCHIP spending for all of FY2009	Projected FY2009 *funding* for shortfalls *before* March 31, 2009	State projected to have no federal SCHIP funds on April 1, 2009	Even if FY2008-09 allotments available all year, projected FY2009 shortfall
A	B	C	D	E	F
Alabama (S)	$71.1	$130.8		Alabama	$53.7
Alaska (M)	$10.4	$23.8	$1.5	Alaska	$11.9
Arizona (S)	$149.1	$140.3		Arizona	
Arkansas (C)	$50.4	$93.7		Arkansas	$43.3
California (C)	$799.2	$1,272.3		California	$473.2
Colorado (S)	$71.5	$114.9		Colorado	
Connecticut (S)	$37.7	$32.5			
Delaware (C)	$13.1	$10.7			
DC (M)	$12.3	$6.9			
Florida (C)	$303.0	$290.4			
Georgia (S)	$175.6	$281.9		Georgia	$106.4
Hawaii (M)	$14.6	$15.7		Hawaii	

[18] §306(a) of S.Con.Res. 70, which also requires that "such legislation would not increase the deficit over either the period of the total of fiscal years 2008 through 2013 or the period of the total of fiscal years 2008 through 2018."

[19] Anita Smith, Chief of the Bureau of Medical Supports, Iowa Department of Human Services (DHS), testimony before U.S. Senate Finance Committee, February 1, 2007, p. 3, available at [http://finance.senate.gov/hearings/testimony/2007test/020107astest.pdf].

[20] For example, see David Bergman, "Perspective on Reauthorization: SCHIP Directors Weigh In," National Academy for State Health Policy, June 2005, p. 8, at [http://www.allhealth.org/BriefingMaterials/PerspectivesonReauthorizationSCHIPDirectors-538.pdf].

[21] The Council of State Governments, "The Book of the States," Lexington, KY, volume 39, 2007, Table 3.2.

State and SCHIP Program Type	FY2009 SCHIP original allotment (excluding other available funds)	Projected federal SCHIP spending for all of FY2009	Projected FY2009 *funding* for shortfalls *before* March 31, 2009	State projected to have no federal SCHIP funds on April 1, 2009	Even if FY2008-09 allotments available all year, projected FY2009 shortfall
A	B	C	D	E	F
Idaho (C)	$23.9	$39.8		Idaho	
Illinois (C)	$198.7	$234.8		Illinois	$36.2
Indiana (C)	$94.5	$93.0		Indiana	
Iowa (C)	$34.1	$66.9		Iowa	$32.9
Kansas (S)	$37.9	$51.9		Kansas	$6.2
Kentucky (C)	$67.4	$89.4		Kentucky	
Louisiana (C)	$84.1	$192.4	$11.9	Louisiana	$96.5
Maine (C)	$14.7	$33.3	$1.8	Maine	$16.7
Maryland (M)	$70.2	$163.8	$11.5	Maryland	$82.1
Massachusetts (C)	$72.4	$322.1	$63.0	Massachusetts	$161.5
Michigan (C)	$146.2	$186.0		Michigan	$21.0
Minnesota (C)	$48.6	$57.5		Minnesota	$8.9
Mississippi (S)	$64.1	$166.0	$18.6	Mississippi	$83.2
Missouri (C)	$81.9	$103.7		Missouri	$15.8
Montana (S)	$14.5	$30.4		Montana	$12.3
Nebraska (M)	$22.5	$37.0		Nebraska	$14.5
Nevada (S)	$52.1	$31.3			
New Hampshire (C)	$10.6	$13.5		New Hampshire	
New Jersey (C)	$102.2	$370.5	$69.0	New Jersey	$185.8
New Mexico (M)	$52.0	$95.1		New Mexico	$43.0
New York (S)	$318.0	$385.4		New York	
North Carolina (C)	$136.1	$227.2		North Carolina	$91.1
North Dakota (C)	$7.9	$13.8		North Dakota	$5.9
Ohio (M)	$157.3	$232.9		Ohio	$61.2
Oklahoma (M)	$70.8	$131.1		Oklahoma	$60.3
Oregon (S)	$61.3	$64.8		Oregon	
Pennsylvania (S)	$167.0	$266.5		Pennsylvania	$6.6
Rhode Island (C)	$13.2	$59.8	$11.7	Rhode Island	$30.0
South Carolina (M)	$70.8	$118.3			
South Dakota (C)	$10.9	$13.7		South Dakota	$1.3
Tennessee (C)	$99.7	$125.9			
Texas (S)	$549.6	$792.2		Texas	
Utah (S)	$41.5	$59.0		Utah	
Vermont (S)	$5.2	$4.5			
Virginia (C)	$96.9	$132.8		Virginia	
Washington (S)	$79.9	$41.9			
West Virginia (S)	$25.0	$39.6		West Virginia	$2.4
Wisconsin (C)	$69.6	$65.4		Wisconsin	
Wyoming (S)	$6.4	$9.8		Wyoming	
	$5 billion	**$7.6 billion**	**$189 million**	**42 states**	**$1.8 billion in 28 states**

Source: Congressional Research Service (CRS) analysis of data from the Centers for Medicare and Medicaid Services (CMS), including states' projections of FY2008 and FY2009, provided on July 15, 2008.

Notes: S = Separate child health program. M = Medicaid expansion program. C = Combination program.